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COMPLAINT civil Action No.

UNITED STATES DISTRICT COURT IN THE
WESTERN DISTRICT OF VIRGINIA

720cv00713

PLAINTIFF: Benjamin Carter #1591524

DEFENDANT(S): Joseph Ely, Christopher King, Warden
Kiser, Lt. Lambert, Miller EA, Sisco S, Sgt. Messer CL, John
Doe, John Doe, John Doe, John Doe (All sued in their individual
capacity); Harold Clarke (sued in his official capacity)

JURISDICTION AND VENUE

1. This is a civil action authorized by 42 U.S.C. section 1983 to redress the deprivation, under color of state law, alleging excessive use of force, conditions of confinement in violation of the Eighth Amendment to the United States Constitution, confinement in segregation in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the right to be free from retaliation for using the courts in violation of the First Amendment to the United States Constitution. The court has jurisdiction under 28 U.S.C. section 1331 and 1343. Plaintiff seeks declaratory relief pursuant to 28 U.S.C. section 2201 and 2202. Plaintiff's claims for injunctive relief are authorized by 28 U.S.C. section 2283/2284 and Rule 65 of the Federal Rules of Civil Procedure.

2. The Western District Of Virginia is an appropriate venue under 28 U.S.C. section 1391(b)(2) because it is where the events giving rise to this claim occurred.

PLAINTIFF

3. Plaintiff Benjamin Carter #1591524, is and was at all times mentioned herein a prisoner at Red Onion State Prison (ROSP) and Wallens Ridge State Prison (WRSP) in the custody of the Virginia Department Of Corrections.

DEFENDANT(S)

4. Defendant Joseph Ely is the Unit Manager (UM) for Housing Unit (HU) D at Wallens Ridge State prison at all times mentioned herein. He is legally responsible for the rationale of the Multi Disciplinary Team (MDT) decisions for offenders housed in HU-L Restrictive Housing Unit (RHU) at WRSP. He is sued in his Individual and Official Capacity.
5. Defendants John Doe (x4) is a correctional officer employed at ROSP whose name is presently unknown to the plaintiff. They are all sued in the Individual And Official Capacity.
6. Defendant Harold Clarke is the Head Director of Virginia Department of Corrections (VADOC). He is legally responsible for the operations of all VADOC facilities. He is sued in his Official Capacity.

7. Defendant Christopher King is the Major at WRSP. He is sued in his Individual and Official Capacity.
8. John Doe (x4) Defendant(s) are correctional officers at WRSP who are employed, whose names are presently unknown to plaintiff. They are all sued in their Individual Capacity, and Official Capacity.
9. Defendant Warden Kiser is the warden for ROSP at all times mentioned herein. He is sued in his Individual and Official Capacity.
10. Defendant(s) Lt. Lambert, ~~is~~ lieutenant employed at ROSP at all times mentioned here. He is sued in his Individual capacity and Official Capacity.
11. Defendant Miller EA is the UM for HU-B at ROSP at all times mentioned herein. He is sued in his Individual and Official Capacity.
12. Defendant Sisco S. is a Correctional Officer employed at ROSP at all times mentioned herein. He is sued in his Individual and Official Capacity.
13. Defendant Sgt. Messer is a Sergeant employed at ROSP at all times mentioned herein. He is sued in his Individual and Official Capacity.

FACTS

14. On May 19, 2020 at 10am, I was called to the UM millers office in HU-B(123) to address a Informal Complaint. I submitted on May 17, 2020 at ROSP.
15. I was engaged in a verbal dispute with the UM miller about him wanting me to sign a withdrawl of my complaint and a safety wavier to be in HU-B(1) and I didnt want to.
16. Lt. Lambert entered the threshold of the UM office and said "Fuck you and that policy you ignarant mother fucker, you shouldve never brought your stupid ass to prison". He then ordered me to sign the withdrawl of my complaint and to sign the safety waiver or else I was going to the hole.
17. I refused to sign the withdrawl of my complaint and the safety waiver and got up to leave the UM office.
18. Lt. Lambert stood in the threshold entrance/exit of the UM in HU-B(123) at ROSP and I said "excuse me sir?" and Lt. Lambert said "Stupid Nigger."
19. I assaulted Lt. Lambert.
20. I was then restrained and placed in hand cuffs behind my back

and shackles around my ankles, face down on the floor of HU-B (123) Sally port and punched and Kicked in the face/head for 10-15 minutes consecutively by Lt. Lambert, UM Miller, officer sisco, Sgt. Mes- ser, John Doe (x4).

21. I was stood up in full restraints and John Doe stood on the shackles and John Doe slammed me face first into the concrete outside the threshold of the entrance to HU-B(123) at ROSP.

22. John Doe (x4) spit on me twice, landing on the back of my neck and on my cheek while I was on the ground.

23. I was stood up and escorted still in restraints towards medical by John Doe (x4)

24. On the escort, at HU-A/HU-B median at ROSP John Doe (x4) punched me in the head/Face multiple times and John Doe told me to "Suck his dick" and put the crotch area of his pants against my face as I was bent forward from the force on my arms and becoming weak.

25. At the entrance Sally port of the medical support building (from outside), John Doe Knead me in the face and grabbed my head and shoved his crotch area of his pants in my face, rubbing my face against his crotch area of his pants and said "You like that

dick dont you?" while John Doe(x4) punched me multiple times in the head/face.

26. Once in medical station still in full restraints at ROSP, I was knood from behind in my balls by John Doe and John Doe squeezed my balls excessively hard multiple times while I yelled for help, and John Doe stuck his finger in my anal, while John Doe(x4) punched me in the face/head and John Doe excessively jammed a medical instrument in my right ear.

27. Warden Kiser entered the medical station and said: "Shut the fuck up!, I'm the warden, when this camera and nurse come? you say NO complaints, or we'll kill you, you understand?"

28. Warden Kiser then instructed John Doe to get a head net to block out my face because I looked terrible.

29. John Doe(x4) escorted me to medical bed #1 at ROSP, still in full restraints were they cut my clothes off, all but my boxers and John Doe rubbed my cuts on my face with a glove that had maze on it while John Doe(x4) put me in 5 point restraints excessively tight while warden Kiser watched.

30. I remained in 5 point restraints excessively tight for 2-3 hours with a plastic mask on my face while I was burning from the
pg# 6 of 15

maze and laying in my urine in medical bed #1 at ROSP

31. Warden Kiser, John Doe(x4) came back into the medical cell with a woman phycologist, and she (phycologist) ordered the warden Kiser and John Doe(x4) to remove the face mask and loosen the excessively tight restraints immediately.

32. John Doe(s) loosend the wrist restraints and removed the mask and left me laying in my urine with warden Kiser present.

33. Warden Kiser came back at 5pm and informed me I was going to be emergency transferred because "It wasn't safe" for me at ROSP, and that WRSP would be there to transfer me, and I would be put in ambulator restraints and given a dinner meal.

34. John Doe(s) put me in ambulator restraints and sat a tray in the slot of medical bed #1 door with no spoon and spit inside the food.

35. I was escorted to Intake in only my urine saturated boxers and ambulator restraints.

36. I was given dirty clothes to put on with my urine saturated boxers in intake at ROSP, to wear for transport to WRSP.

37. WRSP, John Doe(x4) restrained me for transport and attached me

with a "Shock Belt," that WRSP John Doe said released 100 volts of electricity for 8 seconds a time.

38. Once in transport vehicle and driving to WRSP, John Doe triggered the "Shock Belt" four times in route.

39. I arrived at WRSP, May 19, 2020 at 5:30pm and Major King opened the back door and stood on my thigh with one boot and said "Fuck you, fuck ya mama, fuck the crips, fuck ya aunty, im the Major Here! You hurt a brother! I ought to put one of these knots on your head"

40. Major King grabbed my eye that was busted and squeezed it so hard blood came back running down my face from the already open fresh wound and I grunted and cried to stop.

41. Major King told me to get out the vehicle on "his" side and to say "No complaints or you already know?" to the intake nurse at WRSP.

42. I was escorted into WRSP in transport restraints by John Doe (x4) at WRSP, and did as instructed by Major King when questioned by the intake nurse.

43. I was escorted to HU-D, cell 103 at WRSP in hand cuffs and shackles

where there was nothing in the cell and feces splattered on the ceiling.

44. John Doe(x4) at WRSP gave me empty food trays on 5-20-2020 and 5-21-2020.

45. Major King came to my cell D-103 at WRSP on 5-20-2020, and I told him it was feces on the ceiling and I needed a mattress and my intake clothes required to offenders. Major King instructed the officers to get me a mattress and he told me he didn't care about shit on the ceiling."

46. On June 2, 2020, I went to my ICA before the MDT and asked for my required intake offender clothes because I still had none.

47. On June 12, 2020, I received my intake clothing from Officer Cox.

48. On June 18, 2020, I went before the MDT again and was remained in RHU status for another 30 days.

49. On June 29, 2020, I received my first shower since being at WRSP by officers Cox and Orr.

50. On July 16, 2020 Joseph Ely violated my due process by acting as the ICA recommender and Administrative Reviewer,
pg #9 of 15

approving his partial decision against policy at WRSP.

51. On August 18, 2020, I went before the MOT and it was only Joseph Ely and Major King and I advised them both that they were violating my due process rights and Joseph Ely violated my due process again by acting as the ICA recommender and Administrative Reviewer approving his partial decision again at WRSP.

52. On September 15, 2020, Joseph Ely ordered that Officers Pittman and Dryden bring me to his office at 1pm in HU-D(456).

53. I was hand cuffed and shackled and escorted to Joseph Ely's Office where I was intimidated by the presence of Lt. Kimberlin, Lt. Baby Face, Sgt. Cor., Counselor Benjamin Young, Joseph Ely, Officer Pittman and Officer Dryden, all in "the office with me on WRSP.

54. Joseph Ely asked me "did I know a Ms. Brown?" and he then called the advocate when I said "no", on speaker in his office with all mentioned in fact "53," still present.

55. Joseph Ely became immediately hostile with Ms. Brown because upon information and belief, she was an Advocate who had filed a complaint online on my behalf about me being in RHU status on WRSP for over 100 days, against

Operating Procedure (OP) 841.4 as a level 5 offender.

56. Joseph Ely stated he "was the reason I was in RHU, it was his decision and he wasn't letting me out of RHU because he said so," and hung the call up when I told the Advocate I "was in fear for my safety at WSP and in the western Region of VADOC."

57. Joseph Ely then stated I "hurt his friend and I wasn't getting out of RHU ever."

58. On September 17, 2020, Joseph Ely recommended I be re-classified to level 8 (segregation). It was approved by David Anderson on 9-23-2020 and then approved by Central Classification Services (CCS) by Henry Ponton on 10-13-2020.

59. On October 15, 2020, Joseph Ely violated my due process by acting as the ICA recommender and Administrative Reviewer approving his partial decision of keeping Plaintiff in RHU status again, and Plaintiff grieved the violation of procedural due process.

60. On November 4, 2020, the Plaintiff's grievance was deemed FOUNDED, and ordered to have re-hearing.

61. On November 5, 2020, plaintiff appealed grievance to the Regional Ombudsman.
62. On November 12, 2020, plaintiff was given his first ICA review at "his cell D-103 at WRSP still with feces on the ceiling, by Major King, counselor Benjamin Young, and Joseph Ely.
63. Plaintiff told Major King again about the feces on the ceiling but Major King didn't respond.
64. On November 21, 2020 at 1pm, the Chief of Housing for WRSP did a security check in HU-D-1 and I asked him if I could talk to him and he said I "was going back to ROSP" and I said "but they beat me unmercifully" and Johnathan Carico said I "shouldn't've filed a grievance".
65. Defendant Harold Clarke has authority to order plaintiff not be transferred back to ROSP, transfer plaintiff out of the Western Region VADOC, released out of Level 5 (segregation) for failure of procedural due process and retaliation, re-classified back to security level (SL) 5, and barring the defendants from housing plaintiff in the Western Region VADOC.

LEGAL CLAIMS
pg# 11 of 15

66. Plaintiff realleges and incorporates by reference paragraphs 1-65.

67. The actions of defendant(s) Christopher King, Lt. Lambert, Miller EA, Sgt. Messer, Officer Sisco, John Doe, ~~Warden~~ Kiser in using excessive force against plaintiff without need or in failing to intervene to prevent the misuse of force, were done maliciously and sadistically and constituted cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution, and denied plaintiff the right to be free from retaliation for using the courts in violation of the First Amendment to the Constitution.

68. The failure of defendant Christopher King to remove plaintiff from a cell with feces splattered on the ceiling for 6 months and subjected him to stay in cell D-103 constituted hazardous conditions of confinement in violation of the Eighth Amendment to the United States Constitution.

69. The actions of defendant Joseph Ely in Administratively Approving his singular recommendation(s) denied the plaintiff due process of law of the Fourteenth Amendment to the United States Constitution and defendant Joseph Ely recommending plaintiff be re-classified to level S (segregation) after Advocate filed complaint on behalf of plaintiff, denied the right to be free from retaliation for using the courts in violation of the First Amendment to the United States Constitution.

70. Plaintiff Benjamin Carter has no plain, adequate or complete remedy at law to redress the wrongs described herein. Plaintiff has been, and will continually be irreparably injured by the defendant(s) conduct unless this court grants the declaratory and injunctive relief which plaintiff seeks from Defendant Harold Clarke.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Benjamin Carter #1591524 respectfully prays that this court enter judgement:

71. Granting Plaintiff Benjamin Carter a declaration that all acts and omissions described herein violate his rights under the Constitution and laws of the United States; and

72. A preliminary injunction ordering Defendant Harold Clarke to: 1) Not transfer plaintiff back to ROSP, 2) transfer plaintiff out of the Western Region VADOC, and

73. A permanent injunction ordering Defendant Harold Clarke to: 1) Release plaintiff out of level 5 (segregation), 2) re-classify plaintiff back to SL 5, 3) barring the defendants from housing plaintiff in the Western Region VADOC,

74. Plaintiff Benjamin Carter seeks Compensatory Damages
pg# 13 of 15

in the following amounts:

- \$40,000 jointly and severally against defendant(s) Lt. Lambert, Miller E.A., Sgt. Messer, Warden Kiser, John Doe(x4) for the physical and emotional injuries sustained as of plaintiff's beating, retaliation,
- \$5,000 against defendant Christopher King for the physical and emotional injuries sustained from defendant's excessive force/misuse of force on May 19, 2020 at WRSP.

75. Plaintiff Benjamin Carter seeks punitive Damages in the following amounts:

- \$10,000 against defendant Joseph Ely for depriving plaintiff of his Liberty without due process and retaliation,
- \$5,000 against defendant Christopher King for subjecting plaintiff to hazardous conditions of confinement and misuse/excessive force,
- \$20,000 against defendant(s) Lt. Lambert, Miller E.A., Sgt. Messer, Warden Kiser, John Doe(x4) "each",
- \$25,000 against defendant Sisco S.

76. Plaintiff Benjamin Carter seeks Nominal Damages in the following amounts:

- \$1.00 against defendant(s) Joseph Ely, Christopher King, Warden Kiser, Sisco S, Sgt. Messer, Lt. Lambert, John Doe(x4) "each",
- \$.50 against defendant Miller E.A.

77. Plaintiff Benjamin Carter also seeks a jury trial on all issues triable by jury,
78. Plaintiff Benjamin Carter also seeks recovery of all costs in this suit, and
79. Any Additional relief this court deems just, proper, and equitable.

November 22, 2020
Respectfully Submitted,
Benjamin Carter #1591524
Wallens Ridge State Prison
P.O. Box 759
Big Stone Gap, VA, 24219

VERIFICATION

I have read the foregoing complaint and hereby verify that the matters alleged therein are true, except as to matters alleged on information and belief, and, as to those, I believe them to be true. I certify under penalty of perjury that the foregoing is true and correct. Executed at Big Stone Gap, VA on November 22, 2020.

Benjamin Carter
Benjamin Carter

~~XXXXXXXXXX~~
BENJAMIN CARTER #1591524
WALLENS RIDGE STATE PRISON
P.O. BOX 759
BIG STONE GAP, VA, 24219


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